

THE HON. JOHN H. CHUN

UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KRISTI SMITH,

Plaintiff,

v.

CLOVER PARK SCHOOL DISTRICT NO.
400,

Defendants.

No. 3:21-cv-05767-JHC

JOINT PRETRIAL ORDER

I. JURISDICTION

Jurisdiction is vested in this court by virtue of 28 U.S.C. § 1331 based on Plaintiff's claims of violations of the Family Medical Leave Act, 29 U.S.C. § 2601 *et seq.* The Court has supplemental jurisdiction over Plaintiff's related state law claims under 28 U.S.C. § 1367.

II. CLAIMS AND DEFENSES

A. **Plaintiff** asserts that she will pursue at trial the following claims:

1. Disability discrimination in violation of the Washington Law Against Discrimination ("WLAD"), RCW Ch. 49.60 *et seq.*
2. Retaliation in violation of the WLAD, RCW Ch. 49.60 *et seq.*
3. Violations of the Family Medical Leave Act, 29 U.S.C. § 2601 *et seq.* ("FMLA"), for failing restore Smith to the position she held or an equivalent position after she took leave, and for taking one or more adverse employment actions against Smith because she

requested or took FMLA leave or opposed what she reasonably believed to be violations of the FMLA.

4. Violations of the Washington Family Leave Act, RCW Ch. 50A (“WFLA”), for failing to restore Smith to the position she held or an equivalent position after she took leave, and for taking one or more adverse employment actions against Smith because she requested or took WFLA leave, or opposed what she reasonably believed to be violations of the WFLA.

5. Plaintiff also seeks injunctive relief under the WLAD, which, as equitable relief, will be decided by the Court as appropriate, following the jury’s verdict. Plaintiff will also seek attorneys’ fees and costs as the prevailing party as authorized by law, as well as exemplary or similar damages as authorized by law.

B. **Defendant** will pursue the following affirmative defenses:

1. Plaintiff has failed to mitigate her alleged damages.

III. ADMITTED FACTS

The following facts are admitted by the parties:

1. Plaintiff Kristi Smith (“Smith”) is a Washington resident who lives and has lived in Kitsap County at all times relevant to this lawsuit.
2. Defendant Clover Park School District No. 400 (“CPSD” or “the District”) is a municipal corporation located in Pierce County, Washington.
3. The District had more than 50 employees at all times relevant to this lawsuit.
4. Smith was hired by the District and began her employment July 1, 2014.
5. Smith’s initial title with the District was Director for Teaching and Learning.

- 1 6. Effective July 1, 2017, Smith was promoted to Executive Director for Teaching and
2 Learning.
- 3 7. Smith became a member of the Superintendent's Council beginning in the 2017–2018
4 school year and remained a member until July 1, 2020.
- 5 8. The District's Board named Ron Banner Superintendent during a School Board meeting
6 on March 11, 2019. Mr. Banner officially assumed the role of Superintendent on July 1,
7 2019.
- 8 9. Historically, the District's Deputy Superintendent position included oversight and
9 responsibility for most of the departments and programs Plaintiff oversaw during her one-
10 year term as Assistant Superintendent for Instructional Programs.
- 11 10. On September 16, 2021, Smith filed this lawsuit alleging violations of the WLAD.
- 12 11. Ron Banner's first year as Clover Park's Superintendent was in 2019-2020.
- 13 12. In March 2020, Mr. Banner appointed Mr. Laubach as Clover Park's Deputy
14 Superintendent effective the next school year starting July 1, 2020.
15
16

17 IV. ISSUES OF LAW

18 **A. By Plaintiff:** The Court has addressed many of the central issues of law in a comprehensive
19 Order on the parties' respective summary judgment motions, and Plaintiff's motion to
20 exclude certain expert testimony. *See* Dkt. 46. The issues for which the Court will oversee
21 adjudication are as follows:
22

- 23 1. Did Defendant violate the WLAD, RCW Ch. 49.60 *et seq.* by discriminating or
24 retaliating against Smith based on her disability, request for leave, taking of leave,
25 request for reasonable accommodations, use of reasonable accommodations, or for
26 opposing what Smith reasonably believed to be violations of the WLAD?
27

2. Did Defendant violate the FMLA by failing restore Smith to the position she held or an equivalent position after she took leave, or by taking one or more adverse employment actions against Smith for taking FMLA leave or opposing what she reasonably believed to be violations of the FMLA?

3. Did Defendant violate the WFLA by failing restore Smith to the position she held or an equivalent position after she took leave, or by taking one or more adverse employment actions against Smith for taking WFLA leave or opposing what she reasonably believed to be violations of the WFLA?

B. By Defendant.

Issue 1: Did Defendant violate the WLAD, RCW Ch. 49.60 *et seq.*, by discriminating or retaliating against Plaintiff based on her temporary physical disability?

Issue 2: Did Defendant interfere with Plaintiff's FMLA rights under 29 U.S.C. § 2615(a)(1), and/or her the corresponding WFLA, rights by failing to restore Plaintiff to the same or an equivalent position upon her return from leave in January 2020?

Defendant asserts that the following issues of law be added to those listed in Plaintiff's Pretrial Statement at Section IV.

- Did Defendant lawfully transfer Plaintiff to a subordinate position under RCW 28A.405.230?
- Did Defendant lawfully take certain actions pursuant to statute, policy, contract or otherwise that Plaintiff now challenges including: swapping Plaintiff's Teaching and Learning oversight as an assistant superintendent with Student Services oversight from another assistant superintendent; transferring Plaintiff to a subordinate position under RCW 28A.405.230; and/or naming a different deputy superintendent instead of Plaintiff?

- Were the claimed discriminatory acts by the District a substantial factor in any decisions adversely affecting Plaintiff's employment? The same actor defense applies to all actions complained about by Plaintiff.
- Has Plaintiff failed to mitigate her alleged damages?
- Has Plaintiff failed to demonstrate an entitlement for declaratory and other relief?

V. EXPERT WITNESSES

The name(s) and addresses of the expert witness(es) to be used by each party at the trial and the issue upon which each will testify is:

(1) On behalf of plaintiff:

NAME & ADDRESS	WILL TESTIFY OR POSSIBLE WITNESS ONLY	GENERAL NATURE OF EXPECTED TESTIMONY
Christina Tapia, Ph.D. Northwest Economics 1416 NW 46 th Street, Suite 105 Seattle, WA 98107	Will testify.	Past and future economic damages suffered by Smith. Dr. Tapia is retained expert.
Judith A. Billings Targeted Alliances 9821 74th Ave. E. Puyallup, WA 98373-1249 (253) 840-4690	Possible witness only.	Rebuttal of opinions of Carla Santorno. Ms. Billings is a retained expert.
Eric Lee, DO The Doctors Clinic: Cavalon Place 2011 NW Myhre Rd. #203 Silverdale, WA 98383	Possible witness only.	The nature, extent, and treatment of Smith's medical disability.
Maxine Mindel, CCC-SLP 11309 67th Ave. Ct. NW Gig Harbor, WA 98332 (253) 857-3841 maxinemindel@comcast.net	Possible witness only.	The nature, extent, and treatment of Smith's medical disability.

NAME & ADDRESS	WILL TESTIFY OR POSSIBLE WITNESS ONLY	GENERAL NATURE OF EXPECTED TESTIMONY
Erin M. Dawson, MD The Doctors Clinic 450 Kitsap Blvd., Suite 250 Port Orchard, WA 98366	Possible witness only.	The nature, extent, and treatment of Smith's medical disability.

(2) On behalf of defendant:

NAME & ADDRESS	WILL TESTIFY OR POSSIBLE WITNESS ONLY	GENERAL NATURE OF EXPECTED TESTIMONY
Carla Santorno c/o Preg O'Donnell & Gillett 901 Fifth Ave., Ste. 3400 Seattle, WA 98164-2026	May testify.	Carla Santorno is expected to testify regarding whether the Superintendent acted within the standard of care and consistent with the District's policies and procedures and Washington Law with respect to Plaintiff's transfer of position.
William Partin, CPA, ABV, MAFF, CFE c/o Preg O'Donnell & Gillett 901 Fifth Ave., Ste. 3400 Seattle, WA 98164-2026	May testify.	William Partin is expected to rebut any opinions offered by plaintiff's forensic expert Tapia and/or other witnesses addressing any economic damages. Mr. Partin is expected to testify about alleged past and future economic loss.

VI. OTHER WITNESSES

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

(a) On behalf of plaintiff:

NAME & ADDRESS	WILL TESTIFY OR POSSIBLE WITNESS ONLY	GENERAL NATURE OF EXPECTED TESTIMONY
Kristi Smith c/o Beck Chase Gilman PLLC 705 S. Ninth St., Suite 305 Tacoma, WA 98405	Will testify.	Plaintiff will testify as to her disability, abilities, reasonable accommodations, Defendant's wrongful conduct including acts of discrimination and retaliation, and damages.
Norm Smith c/o Beck Chase Gilman PLLC 705 S. Ninth St., Suite 305 Tacoma, WA 98405	Will testify.	Plaintiff's spouse will testify as to Plaintiff's disability, abilities, reasonable accommodations, Defendant's wrongful conduct including acts of discrimination and retaliation, and damages.
Ron Banner c/o Preg O'Donnell & Gillett PLLC 901 Fifth Ave., Suite 3400 Seattle, WA 98164	Will testify.	Knowledge of events giving rise to this case and Rule 30(b)(6) topics.
Karen Butler 8549 East Caraway Road Port Orchard, WA 98366	Possible witness only.	Knowledge of Plaintiff's abilities, disabilities, reasonable accommodations, and damages.
Greg Davis c/o Preg O'Donnell & Gillett PLLC 901 Fifth Ave., Suite 3400 Seattle, WA 98164	Will testify.	Knowledge of events giving rise to this case and Rule 30(b)(6) topics.
Aranka Holmes c/o Preg O'Donnell & Gillett PLLC 901 Fifth Ave., Suite 3400 Seattle, WA 98164	Possible witness only.	Knowledge of Defendant's response to Public Records Act requests related to Plaintiff.
Meghan Eakin c/o Preg O'Donnell & Gillett PLLC 901 Fifth Ave., Suite 3400 Seattle, WA 98164	Possible witness only.	Knowledge of events giving rise to this case, including in her capacity as one of Defendant's Executive Directors.
Carole Jacobs c/o Preg O'Donnell & Gillett PLLC 901 Fifth Ave., Suite 3400 Seattle, WA 98164	Possible witness only.	Knowledge of events giving rise to this case, including in her capacity as a member of Defendant's school board.

NAME & ADDRESS	WILL TESTIFY OR POSSIBLE WITNESS ONLY	GENERAL NATURE OF EXPECTED TESTIMONY
<p>Linda Krininger 10334 West Salmonberry Road Cheney, WA 99004</p> <p>c/o Preg O'Donnell & Gillett PLLC 901 Fifth Ave., Suite 3400 Seattle, WA 98164</p>	Will testify.	Knowledge of events giving rise to this case, including in her capacity as Defendant's former Director of Human Resources. This witness resides in more than 100 miles from the courthouse. With the Court's permission, Plaintiff will seek to present this witness's testimony via Zoom. If that option is unavailable, then the witness will testify by deposition under Federal Rule of Civil Procedure 32(a)(4).
<p>Brian Laubach c/o Preg O'Donnell & Gillett PLLC 901 Fifth Ave., Suite 3400 Seattle, WA 98164 (253) 289-5104</p>	Possible witness only.	Knowledge of events giving rise to this case, including in his capacity as Deputy Superintendent or Assistant Superintendent for Defendant.
<p>Tess McCartan c/o Preg O'Donnell & Gillett PLLC 901 Fifth Ave., Suite 3400 Seattle, WA 98164</p>	Possible witness only.	Knowledge of events giving rise to this case, including in her capacity as one of Defendant's Executive Directors.
<p>Lori McStay c/o Preg O'Donnell & Gillett PLLC 901 Fifth Ave., Suite 3400 Seattle, WA 98164</p>	Will testify.	Knowledge of events giving rise to this case, including in her capacity as Defendant's Executive Director of Human Resources.
<p>Dr. Brian Olsen 3114 Cheyenne St. Tacoma, WA 97407</p>	Possible witness only.	Knowledge of Plaintiff's abilities, disabilities, reasonable accommodations, and damages.
<p>James Martin "Marty" Schafer c/o Preg O'Donnell & Gillett PLLC 901 Fifth Ave., Suite 3400 Seattle, WA 98164</p>	Possible witness only.	Knowledge of events giving rise to this case, including in his capacity as a former member of Defendant's school board.

NAME & ADDRESS	WILL TESTIFY OR POSSIBLE WITNESS ONLY	GENERAL NATURE OF EXPECTED TESTIMONY
Holly Shaffer 8717 153rd Street East Puyallup, WA 98375	Will testify.	Knowledge of Defendant's wrongful conduct including acts of discrimination and retaliation, and damages.
Paul Wagemann c/o Preg O'Donnell & Gillett PLLC 901 Fifth Ave., Suite 3400 Seattle, WA 98164	Possible witness only.	Knowledge of events giving rise to this case, including in his capacity as a member of Defendant's school board.

(b) On behalf of defendant:

NAME & ADDRESS	WILL TESTIFY OR POSSIBLE WITNESS ONLY	GENERAL NATURE OF EXPECTED TESTIMONY
Kristi Smith c/o Beck Chase Gilman PLLC 705 S. Ninth St., Suite 305 Tacoma, WA 98405	Will testify.	Plaintiff will testify regarding her knowledge of facts pertaining to the claims, defenses, and alleged damages at issue in this lawsuit.
Ron Banner c/o Preg O'Donnell & Gillett PLLC 901 Fifth Ave., Suite 3400 Seattle, WA 98164	Will testify.	Ron Banner will testify regarding his knowledge of facts pertaining to the claims, defenses, and alleged damages at issue in this lawsuit.
Lori McStay c/o Preg O'Donnell & Gillett PLLC 901 Fifth Ave., Suite 3400 Seattle, WA 98164	Will testify.	Lori McStay will testify regarding her knowledge of facts pertaining to the claims, defenses, and alleged damages at issue in this lawsuit.
Brian Laubach c/o Preg O'Donnell & Gillett PLLC 901 Fifth Ave., Suite 3400 Seattle, WA 98164 (253) 289-5104	Will testify.	Brian Laubach will testify regarding his knowledge of facts pertaining to the claims, defenses, and alleged damages at issue in this lawsuit.

NAME & ADDRESS	WILL TESTIFY OR POSSIBLE WITNESS ONLY	GENERAL NATURE OF EXPECTED TESTIMONY
James Martin “Marty” Schafer To Be Supplemented	Will testify.	Marty Schafer will testify regarding his knowledge of facts pertaining to the claims, defenses, and alleged damages at issue in this lawsuit.
Carole Jacobs To Be Supplemented	Will testify.	Carole Jacobs will testify regarding her knowledge of facts pertaining to the claims, defenses, and alleged damages at issue in this lawsuit.
Tess McCartan c/o Preg O’Donnell & Gillett PLLC 901 Fifth Ave., Suite 3400 Seattle, WA 98164	May testify.	Tess McCartan will testify regarding her knowledge of facts pertaining to the claims, defenses, and alleged damages at issue in this lawsuit.
Meghan Eakin c/o Preg O’Donnell & Gillett PLLC 901 Fifth Ave., Suite 3400 Seattle, WA 98164	May testify.	Megan Eakin will testify regarding her knowledge of facts pertaining to the claims, defenses, and alleged damages at issue in this lawsuit.
Suzy Kontos c/o Preg O’Donnell & Gillett PLLC 901 Fifth Ave., Suite 3400 Seattle, WA 98164	May testify.	Suzy Kontos will testify regarding her knowledge of facts pertaining to the claims, defenses, and alleged damages at issue in this lawsuit.
Holli Bocchi To Be Supplemented	May testify.	Holli Bocchi will testify regarding her knowledge of facts pertaining to the claims, defenses, and alleged damages at issue in this lawsuit.
Holly Shaffer 8717 153rd Street East Puyallup, WA 98375	May testify.	Holly Schaffer will testify regarding her knowledge of facts pertaining to the claims, defenses, and alleged damages at issue in this lawsuit.
Karen Butler 8549 East Caraway Road Port Orchard, WA 98366	May testify.	Karen Butler will testify regarding her knowledge of facts pertaining to the claims, defenses, and alleged damages at issue in this lawsuit.

NAME & ADDRESS	WILL TESTIFY OR POSSIBLE WITNESS ONLY	GENERAL NATURE OF EXPECTED TESTIMONY
Linda Krininger c/o Preg O'Donnell & Gillett PLLC 901 Fifth Ave., Suite 3400 Seattle, WA 98164	May testify.	Linda Krininger will testify regarding her knowledge of facts pertaining to the claims, defenses, and alleged damages at issue in this lawsuit.
Greg Davis c/o Preg O'Donnell & Gillett PLLC 901 Fifth Ave., Suite 3400 Seattle, WA 98164	May testify.	Greg Davis will testify regarding her knowledge of facts pertaining to the claims, defenses, and alleged damages at issue in this lawsuit.
Record Custodians	May testify.	In the event authentication is contested at time of trial, Defendant reserves the right to call any and all record custodians for authentication of records. Defendant reserves the right to add to the final pretrial order any witnesses identified in discovery, initial disclosures or in depositions, or as necessary to address objections to authenticity or admissibility of evidence by the defense.

VII. EXHIBITS

PLAINTIFF'S EXHIBITS					
Ex. #	DESCRIPTION	AUTHENTICITY	ADMISSIBILITY	OBJECTION	ADMITTED
001	Smith letter to McStay dated Sept. 6, 2019	Disputed	Disputed	FRE 106, 401-403, 602, 701, 801-802, 805, 901, 1000-1004.	
002	Smith email to Banner and McStay dated Sept. 6, 2019	Stipulated	Disputed	FRE 106, 401-403, 602, 701, 801-802, 805.	
003	December 18, 2019 Action Log with Doctor's Note	Disputed	Disputed	FRE 106, 401-403, 901. Objections handwritten notes on pages 1 and 2 only.	

PLAINTIFF'S EXHIBITS					
EX. #	DESCRIPTION	AUTHENTICITY	ADMISSIBILITY	OBJECTION	ADMITTED
004	Laubach email to Banner with subject: "Org Chart – Brian" dated Jan. 6, 2020	Disputed	Disputed	FRE 106, 401-403, 901.	
005	Smith Action Logs and notes	Disputed	Disputed	FRE 106, 401-403, 901.	
006	Board Briefs Memo from Banner to Board dated Jan. 24, 2020	Stipulated	Stipulated		
007	Notes and "Reorg Talking Points" dated Mar. 10, 2020	Stipulated	Stipulated		
008	Banner email to School Board with subject "Leadership Change and Additions," dated Mar. 16, 2020	Stipulated	Stipulated		
009	Banner email to ALT with subject "Superintendent Re-Organization" Dated Mar. 16, 2020	Stipulated	Stipulated		
010	LeBeau letter to Laubach dated Nov. 30, 2016	Disputed	Disputed	FRE 106, 401-404, 801-802, 805	
011	Central Office Leadership Observation dated June 30, 2017	Disputed	Disputed	FRE 106, 401-404, 801-802, 805.	
012	Job Posting for Deputy Superintendent with Mar. 16, 2020 Start Date	Stipulated	Stipulated		
013	Banner and McStay emails re salary dated Mar. 19, 2020	Stipulated	Stipulated		
014	Krininger notes dated April 16, 2020	Disputed	Disputed	FRE 106, 401-403, 602, 701,	

PLAINTIFF'S EXHIBITS					
EX. #	DESCRIPTION	AUTHENTICITY	ADMISSIBILITY	OBJECTION	ADMITTED
				801-802, 805, 901.	
015	Krninger notes re: Concern email	Disputed	Disputed	FRE 106, 401-403, 602, 701, 801-802, 805, 901.	
016	Banner and Smith Emails regarding Assistant Superintendent for Secondary Schools position, dated May 3, 2022	Stipulated	Disputed	FRE 401-403.	
017	Letter of Intent to Hire dated Mar. 11, 2014	Stipulated	Disputed	FRE 401-403	
018	90-Day evaluation dated Sept. 26, 2014	Stipulated	Disputed	FRE 401-403, 602	
019	Annual evaluation dated June 30, 2015	Stipulated	Disputed	FRE 401-403, 602	
020	Annual evaluation dated June 30, 2016	Stipulated	Disputed	FRE 401-403, 602	
021	Annual evaluation dated June 21, 2017	Stipulated	Disputed	FRE 401-403, 602	
022	Annual Performance Appraisal dated June 28, 2018	Stipulated	Disputed	FRE 401-403, 602	
023	90-Day Performance Evaluation dated Sept. 28, 2018	Stipulated	Disputed	FRE 401-403, 602	
024	Board Minutes dated Mar. 11, 2019	Stipulated	Disputed	FRE 401-403	
025	Superintendent's Contract dated Mar. 11, 2019	Stipulated	Disputed	FRE 106, 401-403, 602	
026	Annual Performance Appraisal dated June 12, 2019	Stipulated	Disputed	FRE 401-403, 602.	

PLAINTIFF'S EXHIBITS					
EX. #	DESCRIPTION	AUTHENTICITY	ADMISSIBILITY	OBJECTION	ADMITTED
027	CPSD Org Chart for workflows (Excel) dated June 24, 2019	Stipulated	Stipulated		
028	Note from CHI Franciscan dated Aug. 6, 2019	Stipulated	Disputed	FRE 106, 901	
029	Letter from Dr. Dawson dated Aug. 13, 2019	Stipulated	Disputed	FRE 106, 901	
030	Letter from Dr. Dawson dated Aug. 23, 2019	Stipulated	Disputed	FRE 106, 901	
031	Physician Certification dated Sept. 2, 2019	Stipulated	Disputed	FRE 106, 901,	
032	Physician Certification dated Sept. 12, 2019	Stipulated	Disputed	FRE 106, 901	
033	Letter from Dr. Dawson dated Oct. 3, 2019	Stipulated	Disputed	FRE 106, 901	
034	FMLA Leave Authorization dated Oct. 4, 2019	Stipulated	Stipulated		
035	Letter from Dr. Dawson dated Nov. 5, 2019	Stipulated	Disputed	FRE 106, 901	
036	Dec. 18, 2019 transmittal of Doctor's release to return to work	Stipulated	Stipulated		
037	Accommodations request form dated Dec. 19, 2019	Stipulated	Stipulated		
038	McStay notes dated Mar. 12, 2020	Disputed	Disputed	FRE 106, 401-403, 602, 901	

PLAINTIFF'S EXHIBITS					
EX. #	DESCRIPTION	AUTHENTICITY	ADMISSIBILITY	OBJECTION	ADMITTED
039	Letter from Dr. Dawson dated Mar. 26, 2020	Stipulated	Stipulated		
040	Smith and McStay emails with subject: "Concern" dated April 19 to 29, 2020	Disputed	Disputed	FRE 106, 401-403, 602, 901	
041	Shaffer complaint emails dated May 10, 2020	Disputed	Disputed	FRE 401-404, 602, 608, 801-805	
042	McStay "Step II" response to Shaffer dated May 28, 2020	Disputed	Disputed	FRE 401-404, 602, 608, 801-805	
043	Shaffer email to McStay dated May 28, 2020	Disputed	Disputed	FRE 401-404, 602, 608, 801-805	
044	Annual Performance Appraisal dated June 8, 2020	Disputed	Disputed		
045	HRC charge sent June 22, 2020	Disputed	Disputed	FRE 401-403	
046	Smith complaint about work environment dated Oct. 6, 2020	Disputed	Disputed	FRE 106, 401-403, 602, 901	
047	Laubach reference letter dated Apr. 20, 2021	Stipulated	Stipulated		
048	Annual Summative Evaluation dated June 28, 2021	Stipulated	Stipulated		
049	Complaint for Damages filed in Pierce County Superior Court on Sept. 16, 2021	Stipulated	Disputed	FRE 401-403	
050	HRC closure notice dated Oct. 29, 2021	Disputed	Disputed	FRE 401-403	

PLAINTIFF'S EXHIBITS					
EX. #	DESCRIPTION	AUTHENTICITY	ADMISSIBILITY	OBJECTION	ADMITTED
051	Annual Summative Evaluation dated June 28, 2022	Stipulated	Stipulated		
052	Job description - Deputy Superintendent	Stipulated	Stipulated		
053	Job description – Director of Student Services	Stipulated	Stipulated		
054	2016-17 organization chart	Disputed	Disputed	FRE 401-403,	
055	2017-18 organization chart	Disputed	Disputed	FRE 401-403,	
056	2019-20 organization chart (Jan. 2020)	Stipulated	Stipulated		
057	2020-21 organization chart	Stipulated	Stipulated		
058	Office assignments spreadsheet	Disputed	Disputed	FRE 401-403. Multiple Documents	
059	Evacuation Map	Stipulated	Stipulated		
060	OSPI Role of the Civil Rights Coordinator	Disputed	Disputed	FRE 106, 401-403, 901.	
061	OSPI training slide	Disputed	Disputed	FRE 106, 401-403, 901.	
062	Smith contracts 2014–2022	Stipulated	Stipulated		
063	Salary schedules 2014–2022	Stipulated	Stipulated		
064	Report of Christina Tapia, Ph.D dated July 22, 2022 (for illustrative purposes and for use with the Court's permission to the extent it becomes necessary)	Stipulated	Disputed	FRE 401-403, 602, 701-703, 801-802, 901.	

PLAINTIFF'S EXHIBITS					
EX. #	DESCRIPTION	AUTHENTICITY	ADMISSIBILITY	OBJECTION	ADMITTED
065	Supplemental Report of Christina Tapia, Ph.D dated November 11, 2022 (for illustrative purposes and for use with the Court's permission to the extent it becomes necessary)	Stipulated	Disputed	FRE 401-403, 602, 701-703, 801-802, 901.	
066	Report of Judith Billings dated August 22, 2022 (for illustrative purposes and for use with the Court's permission to the extent it becomes necessary)	Stipulated	Disputed	FRE 106, 401-403	
067	CPSD's Responses to Requests for Admission (for illustrative purposes and for use with the Court's permission to the extent it becomes necessary)	Stipulated	Disputed	FRE 1-6. 401-403	
068	CPSD's answers and objections to Smith's 1st Interrogatories and Requests for Production (for illustrative purposes and for use with the Court's permission to the extent it becomes necessary)	Stipulated	Disputed	FRE 106, 401-403	
069	CPSD's First Supplemental answers and objections to Smith's 1st Interrogatories and Requests for Production (for illustrative purposes	Stipulated	Disputed	FRE 106, 401-403	

PLAINTIFF'S EXHIBITS					
EX. #	DESCRIPTION	AUTHENTICITY	ADMISSIBILITY	OBJECTION	ADMITTED
	and for use with the Court's permission to the extent it becomes necessary)				
070	CPSD's Second Supplemental answers and objections to Smith's 1st Interrogatories and Requests for Production (for illustrative purposes and for use with the Court's permission to the extent it becomes necessary)	Stipulated	Disputed	FRE 106, 401-403	
071	CPSD's Third Supplemental answers and objections to Smith's 1st Interrogatories and Requests for Production (for illustrative purposes and for use with the Court's permission to the extent it becomes necessary)	Stipulated	Disputed	FRE 106, 401-403	
072	CPSD's answers and objections to Smith's 2nd Interrogatories and Requests for Production (for illustrative purposes and for use with the Court's permission to the extent it becomes necessary)	Stipulated	Disputed	FRE 106, 401-403	
073	CPSD's first supplemental answers and objections to Smith's 2nd	Stipulated	Disputed	FRE 106, 401-403	

PLAINTIFF'S EXHIBITS					
EX. #	DESCRIPTION	AUTHENTICITY	ADMISSIBILITY	OBJECTION	ADMITTED
	Interrogatories and Requests for Production (for illustrative purposes and for use with the Court's permission to the extent it becomes necessary)				
074	CPSD's answers and objections to Smith's 3rd Interrogatories and Requests for Production (for illustrative purposes and for use with the Court's permission to the extent it becomes necessary)	Stipulated	Disputed	FRE 106, 401-403	
075	Banner photo	Stipulated	Disputed	FRE 401-403	
076	Laubach photo	Stipulated	Disputed	FRE 401-403	
077	McCartan photo	Stipulated	Disputed	FRE 401-403	
078	Eakins photo	Stipulated	Disputed	FRE 401-403	
079	Schafer photo	Stipulated	Disputed	FRE 401-403	
080	Wagemann photo	Stipulated	Disputed	FRE 401-403	
081	Smith family photos	Stipulated	Disputed	FRE 401-403	

Plaintiff intends to present admitted exhibits in electronic format to jurors.

DEFENDANT'S EXHIBITS					
EX. #	DESCRIPTION	AUTHENTICITY	ADMISSIBILITY	OBJECTION	ADMITTED
500	Letter by Ron Banner re: Transferring of Position with enclosures dated March 10, 2020	Disputed	Disputed	FRE 106, 401-403; MIL No. 3	
501	Board Brief Memo from Ron Banner to	Disputed	Disputed	FRE 106, 401-403	

DEFENDANT'S EXHIBITS					
Ex. #	DESCRIPTION	AUTHENTICITY	ADMISSIBILITY	OBJECTION	ADMITTED
	Board dated November 8, 2019				
502	CPSD's Assistant Superintendent for Instructional Programs Job Description	Disputed	Disputed	FRE 106, 401-403	
503	Organizational Chart, Council Level Positions	Stipulated	Stipulated		
504	Organizational Chart (2021-2022)	Stipulated	Stipulated		
505	McStay's Notes dated March 12, 2020	Stipulated	Disputed	D (see Ex. 38), FRE 106	
506	Executive Summary of Carla Santorno dated July 20, 2022(for illustrative purposes and for use with the Court's permission to the extent it becomes necessary)	Stipulated	Disputed	MIL No. 4, FRE 401-04, 602, 801-803	
507	Report of Mueller & Partin dated September 20, 2022(for illustrative purposes and for use with the Court's permission to the extent it becomes necessary)	Stipulated	Disputed	FRE 401-04, 602, 801-803	
508	Plaintiff's Action Logs and Notes, March 3, 20	Disputed	Disputed	MIL No. 12	
509	CPSD Policy No. 5211	Stipulated	Disputed	MIL No. 3	
510	Calendar Meeting with Subject "Discuss Reorg (few minutes)," dated April 23, 2019	Disputed	Disputed	MIL No. 14	

DEFENDANT'S EXHIBITS					
Ex. #	DESCRIPTION	AUTHENTICITY	ADMISSIBILITY	OBJECTION	ADMITTED
511	Banner Reference Letter dated April 19, 2021	Stipulated	Disputed	FRE 401-03	
512	Email from Krininger to Plaintiff with Subject "Employee Accommodation Plan," dated January 3, 2020	Stipulated	Stipulated		
513	Email from Krininger to Plaintiff with Subject "Updated Accommodation Plan," dated April 6, 2020	Stipulated	Stipulated		
514	Letter to Banner from McCartan and Eakin	Disputed	Disputed	MIL No. 2	
515	FMLA Leave Authorization dated October 4, 2019	Stipulated	Disputed	D (see Ex. 34)	
516	McStay email to Plaintiff with subject "Follow-up to complaint of 10-6-20," dated November 12, 2020	Disputed	Disputed	FRE 106	
517	O'Donnell email to Beck with subject "Smith/Kristi/Clover Park School District," dated November 4, 2020	Stipulated	Disputed	MIL No. 13	
518	RCW 28A.405.230	Stipulated	Disputed	MIL No. 3	
519	CPSD Policy No. 5254	Stipulated	Disputed	MIL No. 3	
520	Kristi Smith Text Messages	Disputed	Disputed	FRE 106, 401-403, 602, 801-803	

DEFENDANT'S EXHIBITS					
EX. #	DESCRIPTION	AUTHENTICITY	ADMISSIBILITY	OBJECTION	ADMITTED
521	Superintendent Ron Banner's Biography	Disputed	Disputed	MIL No. 15, FRE 401-403, 801-803	
522	CPSD Standard Operating Procedures	Disputed	Disputed	FRE 401-403; 801-803	
523	CPSD Board of Directors Role and Responsibility	Disputed	Disputed	MIL No. 15; FRE 401-403; 801-803	
524	Brian Laubach Evaluations 2019-20, 2020-21, 2021-22	Disputed	Disputed	MIL No. 15 FRE 401-403; 801-803	
525	CPSD's Job Description for Laubach's Assistant Superintendent Position 2020	Stipulated	Stipulated		
526	McCartan email to Laubach, Plaintiff, and Eakin sent on October 1, 2020 at 10:34 a.m.	Stipulated	Disputed	FRE 401-403; 801-803	
527	List of Candidates for 2020 and 2022 (Provisional)	Disputed	Disputed	MIL No. 15; FRE 401-403; 801-803	
528	Interviewer's Notes for Kristi Smith's Interview for Assistant Superintendent in 2022 (to be supplemented)	Disputed	Disputed	FRE 401-403; 801-803	

The Parties' Objection Code:

MIL	Subject of Motion in Limine
-----	-----------------------------

VIII. DEPOSITION DESIGNATIONS

Witness Linda Krininger retired from her role as the District's Director of Human Resources. She now resides in Cheney in Eastern Washington. Plaintiff took Ms. Krininger's


1 deposition with the understanding that she was beyond the 100-mile reach of a trial subpoena.
2 However, the District's counsel, who also represents Ms. Krininger, recently indicated that Ms.
3 Krininger will make herself available to testify in-person at trial. As a precaution, the parties
4 have nonetheless prepared deposition designations, counter-designations, objections, and
5 responses, per LCR 16, related to Ms. Krininger's deposition. They are attached as **Appendix A**.
6

7 IX. ACTION BY THE COURT

- 8 (a) This case is scheduled for trial before a jury on January 17, 2023, at 9:30 a.m.
- 9 (b) Trial briefs shall be submitted to the court on or before January 6, 2023.
- 10 (c) Jury instructions requested by either party shall be submitted to the court on or before
11 January 6, 2023. Suggested questions of either party to be asked of the jury by the court
12 on voir dire shall be submitted to the court on or before January 6, 2023.
- 13 (d) All exhibits identified in this Pretrial Order for which authenticity and admissibility are
14 stipulated should be admitted into evidence. Accordingly, it is hereby ordered that the
15 following Trial Exhibits are admitted into evidence: 6, 7, 8 , 9, 12, 13, 27, 34, 36, 37, 39,
16 47, 48, 51, 52, 53, 56, 57, 59, 62, 63, 503, 504, 512, 513, and 525.
17

18 This order has been approved by the parties as evidenced by the signatures of their
19 counsel. This order shall control the subsequent course of the action unless modified by a
20 subsequent order. This order shall not be amended except by order of the court pursuant to
21 agreement of the parties or to prevent manifest injustice.
22

23 Dated this 6th day of January 2023.
24

25 
26 Hon. John H. Chun
27 United States District Judge

1 FORM APPROVED

2 /s/ Eric D. Gilman

Attorney for Plaintiff

3 /s/ Mark O'Donnell

4 Attorney for Defendant

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

KRISTI SMITH,)
)
Plaintiff,)
)
v.) No. 3:21-cv-05767-JHC
)
CLOVER PARK SCHOOL DISTRICT)
NO. 400,)
)
Defendant.)

VERBATIM TRANSCRIPT OF PROCEEDINGS
VIDEO CONFERENCE DEPOSITION OF LINDA KRININGER
OCTOBER 3, 2022

KEY:

Smith's Initial Designations

District's Counter-Designations

Smith's Reply Designations

Defense Objections

Plaintiff's Responses

REPORTED BY: Jessica L. Turner, CCR No. 3187
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APPEARING REMOTELY FROM LEWIS COUNTY, WASHINGTON

Linda Krininger
10/3/2022

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For Defendant: JASON HARRINGTON
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Also Present: GREG DAVIS

Linda Krininger
10/3/2022

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113 - 04/06/2020 email	30
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Linda Krininger
10/3/2022

1 (The following took place on October 3, 2022,
2 beginning at 11:31 p.m.:)

3
4 LINDA KRININGER, having been first duly sworn upon oath
5 or affirmed, testified as follows:
6

7 EXAMINATION

8 BY MR. GILMAN:

9 Q Good morning, Ms. Krininger. My name is Eric
10 Gilman. And can you hear and see me okay?

11 A I can.

12 Q All right. We're doing this deposition over Zoom
13 today. Can you let us know for the record where you
14 are. City and state?

15 A Spokane Valley, Washington.

16 Q And could you state and spell your name, please?

17 A It's Linda. L-I-N-D-A. Krininger. It's
18 K-R-I-N-I-N-G-E-R.

19 Q And what is your current residential address?

20 A 10334 West Salmonberry -- one word -- Road,
21 Cheney, C-H-E-N-E-Y, 99004.

22 Q Have you ever had your deposition taken?

23 A I have not.

24 Q All right. Well, just a couple quick ground rules
25 here. We will try to get through this as quickly as

Linda Krininger

10/3/2022

1 we can.

2 First, we want to make sure we don't speak over
3 one another to make sure the record is clear.

4 Is that understood?

5 A Yes.

6 Q We want to make sure you have audible answers,
7 meaning yeses or noes as opposed to nods of the head
8 or "hmm-mm," "mm-mm," again, so the record is clear.

9 Is that understood?

10 A Yes.

11 Q You are allowed to take breaks during the
12 deposition today. Hopefully we won't be here long
13 enough for that to be necessary. But that's entirely
14 acceptable. The only caveat being is if there is a
15 question pending, we'd ask you to answer the question
16 before you move on.

17 Is that understood?

18 A Yes.

19 Q I'm going to try my best to ask clear questions.
20 If at any point I don't succeed, please ask me for
21 clarification rather than guessing what I'm getting
22 at; is that fair?

23 A Yes.

24 Q All right. Likewise, if I ask a question and you
25 give an answer, we will assume in the aftermath that

Linda Krininger

10/3/2022

1 you understood what was being asked. Is that
2 understood?

3 A Yes.

4 Q All right. And just a moment ago, you were placed
5 under oath. Even though we are here on the computer,
6 you understand that you have the same obligation to
7 be truthful and accurate in your testimony as if you
8 were sitting in a courtroom giving testimony?

9 A Yes.

10 Q Have you done anything to prepare for today's
11 deposition?

12 A Printed out my resume. And got a good night
13 sleep.

14 Q All right. Good. Good. Did you speak with
15 anyone about today's deposition?

16 A I told my boss because he had to be able to
17 approve that I could do this at work.

18 Q All right. You mentioned that you had your CV.
19 Maybe rather than me asking you to try to recite it
20 here, would you have any issue with sharing or
21 emailing that CV with us maybe after we're done here
22 today so that we will have it?

23 A Absolutely, yes.

24 Q And I assume everything on your CV is truthful and
25 accurate?

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1 A Yes.

2 Q When did you work for Clover Park School District?

3 A Did you want the start and end date?

4 Q Please.

5 A Okay. I started January 8th, 2012, and my last
6 day was August 13th, 2021. I'm pretty sure those
7 dates are accurate.

8 Q Were you always in the position of director of
9 human resources during that period of time?

10 A No.

11 Q Can you give me a brief overview of how you moved
12 through the different roles you had?

13 A Yep. I started as HR specialist from January to I
14 believe June. And then in July through I want to --
15 gosh. When was that? July of that same year for
16 about five years, I want to say, I was the HR
17 manager.

18 Q Was the HR manager position different than the HR
19 director position, or was it a title difference that
20 might have shifted?

21 A It was a position difference.

22 Q And then what was your next position after HR
23 manager?

24 A HR director.

25 Q So that would have been I guess starting the 2017

Linda Krininger
10/3/2022

1 academic year?

2 A Right. Yes.

3 Q And is that the highest position you achieved
4 while with Clover Park?

5 A Yes.

6 Q Were you always a report to Lori McStay?

7 A Yes.

8 Q Did you have any other supervisors during your
9 time at Clover Park?

10 MR. HARRINGTON: Object to the form.

11 THE WITNESS: No.

12 BY MR. GILMAN:

13 Q And was the answer to that "no"?

14 A Yes.

15 Q Focusing in on your role as the HR director, can
16 you give just an overview of what your job functions
17 were?

18 A As the HR director?

19 Q Yes, ma'am.

20 A Okay. I had payroll reported to me, as well as
21 employment services. And I dealt with staffing and
22 investigations and over the FMLA and workers' comp
23 stuff, day-to-day records, the public records
24 requests.

25 Q Specific -- well, let me ask a separate question.

Linda Krininger
10/3/2022

1 What kind of education or training do you have to
2 serve as the HR director for a school district?

3 MR. HARRINGTON: Object to the form.

4 BY MR. GILMAN:

5 Q You may answer.

6 A I have my bachelor's degree in human resource
7 management, and I have my master's degree in
8 management in leadership.

9 Q Prior to joining Clover Park, did you work with
10 other school districts or elsewhere?

11 A I worked at South Kitsap School District.

12 Q And how long did you work for South Kitsap?

13 A I was there about five years. No, seven years.

14 Q Was your work at South Kitsap in an administrative
15 role or something else?

16 A Yes, administrative. Not administrator but
17 administrative.

18 Q Did you know Kristi Smith when you worked at South
19 Kitsap?

20 A I did.

21 Q Can you -- how long have you known Kristi Smith?

22 A A long time. Probably since 2005.

23 Q When you were at Clover Park early on, did you
24 suggest to anyone that they might reach out to
25 Ms. Smith about open positions at Clover Park?

Linda Krininger

10/3/2022

1 A Did I suggest that?

2 Q Yes.

3 A I did not.

4 Q Do you know anyone who did?

5 A That wasn't in my purview, so I can't answer that.

6 Q That's all right. Thank you.

7 Did you, during your time working with Ms. Smith
8 either at South Kitsap or at Clover Park, did you
9 generally have a professional or collegial
10 relationship with her?

11 A Yes.

12 Q Did you and Ms. Smith socialize or interact
13 outside of work?

14 A A few times.

15 Q So I recognize that it's been some years since
16 you've probably thought about the issues related to
17 the case that we're here to discuss today. I'm going
18 to try to put up a few documents that -- but, you
19 know, see if you have seen them or not and hopefully
20 to orient yourself to the timeline.

21 First off, you understand that Ms. Smith had a
22 concussion or a head injury at home in August
23 of 2019?

24 A Yes.

25 Q And you also understand that she had to take FMLA

Linda Krininger

10/3/2022

1 leave as a result of that injury?

2 A Yes.

3 Q I want to ask you specifically about a couple of
4 changes related to that. And first, if you want to
5 give me a moment, I'm going to share my screen with
6 you. And I'm going to show you what was previously
7 used in another deposition and marked as Exhibit 3.
8 So that's what I'm going to refer to it as. And let
9 me know if you can see a document on your screen --

10 A Yes.

11 Q -- entitled -- okay.

12 Exhibit 3 is a board brief dated January 24th,
13 2020. I want to draw your attention to this
14 highlighted portion here, and I will also try to zoom
15 in on it as well. I guess the first question is have
16 you ever seen this board brief prior to today?

17 A I have not.

18 Q Go ahead and read the highlighted paragraph that
19 starts with "attached you will find."

20 A Okay.

21 Q So that paragraph, I'll paraphrase a bit,
22 identifies shifting of responsibilities related to
23 teaching and learning and student services. Do you
24 recall that change being made?

25 A I do recall that change being made, yes.

Linda Krininger

10/3/2022

1 Q And was this -- well, strike that.

2 How did you first come to learn that there would
3 be a shift like what's described here in Exhibit 3
4 regarding responsibilities?

5 A My supervisor would have provided me that
6 information.

7 Q And who would that have been?

8 A Lori McStay.

9 Q Do you recall whether you were aware that this
10 change was being made prior to January 24th, 2020?

11 A I don't recall.

12 Q And as far as Ms. McStay informing you of the
13 change, do you recall having any discussions with her
14 about it prior to January 24th of 2020?

15 A I can speculate, but I don't think that's what we
16 want.

17 Q Okay. And I appreciate that. I take your
18 response to mean you don't have a specific
19 recollection of a conversation with Ms. McStay about
20 this change?

21 A That's correct.

22 Q That said, you assume it would have been some
23 information that she would have provided to you in
24 the time frame that this change was occurring?

25 A Yes.

Pl. Resp. | Authenticates Trial Ex. 9; lays
witness foundation.

Linda Krininger
10/3/2022

1 Q Other than potentially learning about this change
2 from Ms. McStay, did you personally have any
3 involvement in the district's decision to make the
4 change that's described in Exhibit 3 regarding
5 Ms. Smith's job duties?

6 A I did not.

7 Q Even informally, do you recall ever having
8 discussions with anybody else about this change
9 regarding Ms. Smith's duties prior to them being
10 enacted in January of 2020?

11 A I do not recall that.

12 Q I'm going to show you another document that was
13 previously marked as Exhibit 2. And this is an email
14 from Mr. Banner to the Administrative Leadership Team
15 dated March 16th, 2020. It's a couple-page exhibit.
16 And then my question is going to focus at least on
17 the top portion of this page.

18 Because we're on Zoom, if you want me to scroll
19 further, I'm happy to do that. But I will give you a
20 chance to read at least the opening portion of that
21 email through "Thank you, Kristi and Brian."

22 A Okay.

23 Q Do you recall receiving this email or an email
24 with this substantive communication in it on or
25 around March 16th, 2020?

Linda Krininger
10/3/2022

1 A I would have received that as part of ALT,
2 Administrative Leadership Team.

3 Q Okay. And were you yourself a member of the
4 Administrative Leadership Team?

5 A Yes.

6 Q Similar question, prior to receiving this
7 March 16th, 2020, email, did you have any knowledge
8 about the fact that Ms. Smith's position was going to
9 be eliminated?

10 A Prior to March 16th?

11 Q Right. Before this email went out.

12 A Yes, I did.

13 Q Okay. And can you tell me what you knew about the
14 changes that are described in Exhibit 2 prior to this
15 email being sent.

16 A I was just notified -- one part of my position was
17 to take any staffing changes and be able to adapt any
18 work flows that we have for electronic approvals and
19 to prepare those ahead of time. So I can't tell you
20 the exact date, but I can tell you I did know before
21 this went out.

22 Q Okay. Do you recall who informed you that the
23 change was happening?

24 A That would be Ms. McStay.

25 Q Okay. Other than telling you that the change

15:11-24 Def. Obj. | speculative

Pl.'s Resp. | Witness is testifying to extent of personal knowledge.

Linda Krininger
10/3/2022

1 would be happening -- and I assume that you needed to
2 make some administrative adjustments to implement
3 that change -- did you discuss anything else about
4 this reorganization that is described in Exhibit 2
5 prior to March 16th?

6 A I don't recall.

7 Q Okay. Do you recall anything else about the
8 conversation that you had with Ms. McStay when she
9 informed you that this reorganization was occurring?

10 A I do not.

11 Q Did you know prior to this email going out that
12 Mr. Brian Laubach was going to be appointed as the
13 deputy superintendent?

14 A I did.

15 Q And how soon before -- and I recognize that you
16 don't have an exact date.

17 Approximately how soon before this announcement
18 email went out do you think you knew about the change
19 that was being described?

20 A I don't recall an exact time.

21 Q And that's fair. What I'm maybe trying to get at
22 is a time frame. Was it a matter of months, days,
23 weeks? Where would you put it?

24 A Weeks.

25 Q Okay. Would you say more or less than two weeks

Linda Krininger

10/3/2022

1 before March 16th that you knew about this change?

2 A I really can't answer that. I'm sorry. I would
3 just be guessing at this point.

4 Q I appreciate that.

5 Other than Ms. McStay informing you at some point
6 prior to this March 16th email in Exhibit 2 that
7 these changes were being made, did you have
8 discussions with anybody else about this
9 reorganization?

10 A No.

11 Q Were you involved in any way in the
12 decision-making process related to this
13 reorganization?

14 A No.

15 Q As part of your job duties as the director of
16 human resources, did you attend school board
17 meetings?

18 A I did.

19 Q And was that a requirement for you?

20 A It was.

21 Q Okay. Did you ever hear any communications or
22 participate in any communications about the school
23 board's desire to have a deputy superintendent
24 appointed by Mr. Banner?

25 A I did not.

Linda Krininger
10/3/2022

1 Q Prior to learning sometime before this March 16th
2 email in Exhibit 2 about the reorganization, had you
3 heard any discussions about the fact that there might
4 be a reorganization?

5 A Yes.

6 Q And can you tell me what that was?

7 A I recall being told that there's going to be some
8 changes: That the assistant superintendent for
9 instructional programs was going away; and Kristi was
10 going to become the director of student services
11 because the current director was retiring; and that
12 Mr. Laubach was going to be the deputy
13 superintendent.

14 Q And the information you just relayed, is that from
15 the conversation with Ms. McStay that you --

16 A Yes.

17 Q -- referred to earlier?

18 A Yes.

19 Q Thank you.

20 Other than that conversation with Ms. McStay, had
21 you been involved in any other communications about a
22 potential reorganization within the administration?

23 A No.

24 Q During the 2019-2020 academic year, did you ever
25 receive any information that Superintendent Banner

Linda Krininger
10/3/2022

1 was considering any person to be his deputy
2 superintendent?

3 A During the 2019 to 2020, I don't recall. Those
4 dates are not familiar to me.

5 Q Sure. Maybe just, again, to reorient, that was --
6 '19 to '20 was the first academic year in which
7 Mr. Banner was the superintendent. With that
8 context, do you recall any discussions or
9 communications that you were aware of during that
10 year about -- go ahead.

11 A Well -- no, I didn't want to interrupt you. I
12 apologize.

13 This communication right here.

14 Q Sure.

15 A Is the '19-'20 school year.

16 Q Yes, ma'am. And prior to the date of Exhibit 2
17 and the discussion you've mentioned with Ms. McStay
18 that that was at some point before this, were there
19 any other communications that you are aware of about
20 potential deputy superintendents for the district?

21 A I don't recall.

22 Q You mentioned a little earlier that part of the
23 reason you knew about this or maybe the reason you
24 knew about this change sometime before March 16th was
25 because you had to do some administrative work in the

Linda Krininger
10/3/2022

1 district systems to make sure that work flows could
2 occur; is that fair?

3 A Yes.

4 Q When Kristi Smith was named the assistant
5 superintendent of instructional programs, did you
6 have to make any kind of similar arrangements?

7 A Yes.

8 Q And what specifically, if you recall, would you
9 have had to do when Ms. Smith came into that role?

10 A Regarding the systems, it's you have to change the
11 work flows. And so that's what I did with her.

12 Q And can you maybe just help me understand what you
13 mean by change the work flows?

14 A Mm-hmm.

15 So the work flows, they start in human resources.
16 And then they go up the chain as far as approval,
17 whether it's for a position -- or there is a couple
18 different systems. Position changes, that type of
19 thing.

20 So it goes from HR to a supervisor of who is
21 requesting the change, whether it's a school. And
22 then it would go -- if it went to a principal and
23 then it involved a department, then it would involve
24 Kristi, because she was -- was she -- I believe she
25 was elementary prior to that.

20:1-23 Def. Obj. - ER 401-403, relevance,
speculative, relates only to uncertain,
unnamed general practice

Linda Krininger
10/3/2022

1 Q One of the topics you mentioned when I asked about
2 your job duties as HR director had to do with
3 investigations. What kinds of things did you do in
4 relation to investigations?

5 A The administrator would call and let us know if
6 there was a problem with the school with a staff.
7 And we would determine if that had to be where HR
8 needed to be involved or not. And then just provide
9 guidance and help them write their letters, outcomes.

10 If it was something that involved HR, then I would
11 go out there and conduct the investigation and work
12 with the administrator to -- with the outcome.

13 Involving the Union, of course, during the whole
14 process.

15 Q And as far as any training you might have specific
16 to HR investigations, do you have any?

17 A I did research online. That, in that respect. I
18 have talked to my peers about how they conducted
19 investigations, and then I even worked with some
20 attorneys in the past and what they were looking for
21 and making sure that we're adhering to policies and
22 collective bargaining agreements and laws, of course.
23 So that was my experience.

24 Q And I understand that there might be some sources
25 that district HR departments look at. I've heard

Pl. Resp. - Investigation practices of District's HR Director are relevant, including where claim is that District ignored its own investigation requirements to retaliate against Smith. See Dkt. 46 at 23:23–24:4 (“[W]hether the District . . . ‘failed to investigate potential discrimination in accordance with its own investigative guidelines . . . or ‘refus[ed] to impartially investigate Smith’s October 2020 complaint of discrimination[]’ are highly factual questions” for the jury).

Linda Krininger
10/3/2022

1 WSPA might have some publication. Also OSPI might
2 have some publications.

3 Did you ever attend training or review any
4 publications from any outside entities?

5 A From WSPA. Was mostly WSPA.

6 Q And what does that acronym, WSPA, stand for?

7 A Washington School Personnel Association.

8 Q Did you ever attend any trainings that were
9 communicating the OSPI's investigatory standards for
10 school districts?

11 A I don't believe so.

12 Q I'm going to show you another previously marked
13 exhibit. This is No. 78. And I'll let you take a
14 quick look at that. This is another board brief.
15 It's just dated November 8th, 2019.

16 I'll ask you the same question is do you recall
17 actually ever seeing this board brief prior to today?

18 A I did not read the board briefs.

19 Q Fair enough. Towards the bottom, there is a
20 highlighted section, again, about Kristi Smith. And
21 what I wanted to ask you about specifically is on --
22 and I'm just going to the second page of the exhibit
23 so you can see the change here.

24 There is a sentence that states, "My next step is
25 to seek out a retired administrator to take on her

Linda Krininger
10/3/2022

1 supervisory duties pending the outcome of her medical
2 condition," end quote. Do you see where it says
3 that?

4 A Yes.

5 Q And the question for you is, were you at all
6 involved in this portion of the process in
7 potentially seeking out a retired administrator?

8 A No.

9 Q Regardless of whether you were personally involved
10 in that process, do you have any information one way
11 or another about that search or attempt to find a
12 retired admin.?

13 A I do not.

14 Q Sorry. To hop back, I forgot a question with
15 respect to the investigation aspect of your job.

16 Was there ever any discussion in your training or
17 just as a matter of practice for you about
18 documentation or making sure that there is records
19 kept when you conduct an investigation?

20 A Yes.

21 Q And when you would personally conduct an
22 investigation, did you generally keep contemporaneous
23 notes or reports related to what you were
24 investigating?

25 A Yes.

Linda Krininger

10/3/2022

1 Q Was it your practice to do handwritten notes?

2 Type them after the fact? How did you personally do
3 that?

4 A Most of the time I typed them as I was there.

5 Some cases, I wrote them and then typed them.

6 Q And generally speaking, what is the significance
7 of -- or strike that.

8 Why did you take notes or keep typewritten notes
9 of your investigations?

10 A To go back and review to make sure that we were
11 taking the steps necessary or needed.

12 Q And likewise, I imagine oftentimes when there is
13 an HR investigation involved, there is ultimately
14 some sort of a resolution of the dispute. How is the
15 resolution typically documented for Clover Park
16 School District?

17 A Through letter of expectation, letter of
18 direction, letter of reprimand, progressive
19 discipline.

20 Q And I take it it's probably also possible there
21 might be a letter where there is no finding --

22 A Yes.

23 Q -- of impropriety?

24 A Yes.

25 Q And even in that situation, from HR's perspective,

Linda Krininger
10/3/2022

1 is it important to document the outcome of its
2 investigations?

3 A Yes.

4 Q Regarding your job duties, you also mentioned the
5 accommodations process; do I have that right?

6 A Yes.

7 Q And what was your role, specifically as director
8 of human resources, with respect to the district's
9 accommodations process for employees experiencing
10 disabilities?

11 A I oversaw it. We had an employee that worked on
12 it on accommodations. So we identify whether the
13 employee indicates whether they need an
14 accommodation. We see that that is something that
15 somebody needs.

16 Q Okay. And back during the year that Ms. Smith had
17 her injury and accommodations needs, who was involved
18 in that accommodations process?

19 A I was.

20 Q And you mentioned you were overseeing someone as
21 well. Was that also in relation to Ms. Smith?

22 A No. I did the accommodation for Ms. Smith.

23 Q And just broadly speaking, can you describe the
24 general process that you or the district would go
25 through for determining an appropriate accommodation

Linda Krininger
10/3/2022

1 when someone has a disability?

2 A Absolutely.

3 Essentially, when someone is on FMLA, when they
4 are coming back, we determine if there are any
5 restrictions that are going to be needed upon their
6 return. And we go into the accommodation process and
7 then work with the employee, gather information from
8 their doctor, explore some. You know, our form also
9 invites employees to be able to say what they believe
10 an accommodation process looks like.

11 So then we have a meeting to discuss that and,
12 typically, are able to come up with something at that
13 meeting to be able to say this is what we will be
14 able to do. Sometimes we have to go back and look
15 into costs.

16 I'm just doing general, right? So that's what we
17 typically do. And then we put a plan together and
18 then we send that out.

19 Q Okay. And when you say you "send that out," is
20 that -- is there a form or a format that the district
21 uses for when that plan is finalized?

22 A It's correspondence through email as a record.

23 Q And similar to the investigatory process you spoke
24 to a moment ago, is the reasonable accommodations
25 process also documented by the district or its HR

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1 folks?

2 A I'd say it is. Probably not to the extent of
3 investigations.

4 Q And likewise, what's the overarching purpose of
5 communicating or documenting the RA -- reasonable
6 accommodation process in writing?

7 A To make sure that we have followed up with the
8 employee and to make sure that we have -- everybody
9 is in knowledge of what the accommodation needs to
10 be; that the supervisor understands the restrictions
11 or accommodations that are needed.

12 Q The process that we just talked about for
13 reasonable accommodation, was that followed with
14 respect to Kristi Smith?

15 A Yes.

16 Q I'm going to show you what we will mark as a new
17 exhibit here and I will get it up on the screen for
18 you.

19 (Exhibit No. 110 admitted.)

20 BY MR. GILMAN:

21 Q This is an email thread that includes you as one
22 of the authors from January 1st of 2020. And this is
23 a 3-page exhibit. So I'm going to let you know, it's
24 an email. I'm going to scroll to the bottom first so
25 you can see what the first message was, all right?

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1 I guess not much.

2 Next page up, I will give you a chance to look at
3 that. And let me know when you have had a chance to
4 do so.

5 A Okay.

6 Q And then I'm going to jump back up to the first
7 page. It looks like there was some slight
8 modifications to this on the same day. And I'll let
9 you read that as well where you make a reference to
10 some commentary by Ms. McStay.

11 A Okay. I'm not sure what the difference was
12 without seeing them side by side.

13 Q Sure. I understand. And I will highlight for you
14 what I understood to be the main difference here is
15 just on the days of the week for her part-time
16 schedule. This on the first page is Monday, Tuesday,
17 Thursday. The prior email says Monday, Wednesday,
18 Friday.

19 Do you recall there been any discussion about that
20 modification?

21 A Yes. Yes. I believe that had to do with Kristi's
22 doctor's appointments.

23 Q Got it. Thank you. This email that we got here
24 as Exhibit -- what did we mark it as? -- 110, is this
25 the kind of documentation of the reasonable

28:4-18 Def. Obj. - ER 401-403, relevance,
speculative, relates only to uncertain,
unnamed general practice

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1 accommodations process the district would do that you
2 described in your prior testimony?

3 A Yes.

4 Q Have you ever heard the process of -- working with
5 an employee to find disability accommodations, have
6 you ever heard of the phrase "interactive process"?

7 A Yes.

8 Q Can you just summarize, what is your understanding
9 of what is meant by the interactive process?

10 A Recognizing that there is an accommodation that's
11 needed, gathering information, exploring different
12 accommodations, meeting with the employee, and then
13 implementing the accommodation and then monitoring
14 it.

15 Q Can the district ever impose a reasonable
16 accommodation on an employee without first discussing
17 it with them?

18 A That wasn't our practice.

19 Q Without showing you each iteration, do you recall
20 that Ms. Smith, in cooperation with her physician,
21 had communicated some extensions of some of the
22 accommodations that are listed in this exhibit?

23 A I do recall something of that nature.

24 Q And I'm going to put another exhibit up. We will
25 call this and ask that it be marked Exhibit 111.

Pl. Resp. - Witness implemented District's accommodations process, including as to Smith. Testimony is relevant to show whether District acted inconsistent with its own policies or practices when dealing with Smith. See Dkt. 46 at 23:23-24:4. Testimony is related to the fact that removal of Smith's oversight of Teaching and Learning was not part of the reasonable accommodations process.

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1 (Exhibit No. 111 marked.)

2 BY MR. GILMAN:

3 Q This is a March 26th, 2020, doctor's note from
4 Ms. Smith's physician. The first question is, as the
5 person handling Ms. Smith's reasonable accommodation,
6 would you have been receiving her doctor's notes sort
7 of in realtime while this was going on?

8 A They didn't always come to HR. Sometimes they
9 went to payroll.

10 Q Okay. Just looking at Exhibit 111, Dr. Dawson
11 communicates that Ms. Smith is released to go back to
12 work full time as of March 30th, 2020.

13 Do you recall that information coming to you or
14 learning that Ms. Smith had reached a point where she
15 didn't need the limited work schedule anymore?

16 A Yes.

17 Q I'm going to show you another document, and we
18 will have this marked as 112 just for reference.

19 (Exhibit No. 112 marked.)

20 Q These are some handwritten notes.

21 First off, is that your handwriting?

22 A No.

23 Q Do you recognize whose handwriting that is?

24 A I do not.

25 Q Do you recall participating in a conference,

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1 whether in person or done by phone, around March
2 31st, 2020, about Ms. Smith's accommodations
3 situation?

4 A I don't recall, but if my initials are there. But
5 I don't recall.

6 Q And let me also -- just so you can see some other
7 pages within this Exhibit 112.

8 It's a 3-page document. You are looking at the
9 first -- I guess the second page is not much of a
10 page. And then there is a what looks like a printed
11 out email with some scribbled out text. Is that
12 something that -- the last page of this exhibit, is
13 that something that you did or somebody else?

14 A I don't recall.

15 Q Show you another email. We'll mark it as exhibit
16 113.

17 (Exhibit No. 113 marked.)

18 BY MR. GILMAN:

19 Q And this is an April 6th, 2020, and again, there
20 is a multi-page exhibit. So I'm going to scroll to
21 the bottom because it's the way the email thread
22 flows.

23 The first email at the end of this email is an
24 email from you on April 6th, 2020. And it's an
25 accommodations update per the physician's note on

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1 March 26th. I will give you a chance to read this
2 real quickly. And let me know when you are ready to
3 flip pages.

4 A Do you want me to read from the top, or am I
5 reading the first one from April 6th?

6 Q Just right here at the bottom --

7 A Okay.

8 Q I'm highlighting -- right.

9 A Okay.

10 Q And I'm scrolling to the next page of the email so
11 you can finish reading it.

12 A Okay.

13 Q So having reviewed this, at either late March or
14 early April, did you determine, in cooperation with
15 Ms. Smith, that her accommodations no longer required
16 a limited work schedule?

17 A Based on her doctor's note --

18 Q Other than --

19 A -- yes.

20 Q Thank you.

21 Other than no longer having a reduced work
22 schedule, the district would continue to maintain the
23 LED lighting within her office suite. That was an
24 existing accommodation that would continue?

25 A Yes.

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1 Q I'm going to show you another exhibit. Ask that
2 we have it marked as 114.

3 (Exhibit No. 114 marked.)

4 BY MR. GILMAN:

5 Q This is a July 8th, 2020, doctor's note, again,
6 from Dr. Dawson. Give you a chance to look at that
7 and then let me know when you are ready.

8 A I'm done.

9 Q Okay. Do you recall that at least some of
10 Ms. Smith's disability accommodations extended
11 essentially into the 2020-'21 academic year?

12 A I don't recall, but if it says so on this note,
13 they must have.

14 Q Fair enough. And slightly different question. Do
15 you recall anything that would have occurred in
16 2020-'21 academic year where the district refused to
17 provide any accommodation per Ms. Smith's doctor's
18 notes?

19 A No.

20 Q Show you another exhibit that's previously
21 utilized, Exhibit No. 39.

22 Actually, before I show you that, do you recall in
23 approximately April of 2020 conducting an interview
24 of Holly Shaffer regarding a potential human
25 resources issue?

double-hearsay, 401-403 sepculative, vague, incomplete, confusion, 602 lack of firsthand knowledge and recollection

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1 A There was a meeting.

2 Q What brought about the meeting with Ms. Shaffer?

3 A I recall something in the nature of there was some
4 conversation about something that was said about
5 Kristi. And she contributed to that and said, oh,
6 something about somebody across the hall -- down the
7 hall.

8 Q And how did you come to participate in an
9 interview with Ms. Shaffer about this issue?

10 A I was asked to talk to her to see if she had said
11 that.

12 Q By whom?

13 A Probably Lori McStay because she was my
14 supervisor.

15 Q Did you ever have any discussions with Ron Banner
16 about this issue related to Ms. Shaffer?

17 A I don't recall that.

18 Q Here I am going to show you now that Exhibit 39.

19 These are some handwritten notes. First off, can you
20 see them?

21 A Yes.

22 Q And I appreciate that these are not your
23 handwritten notes. Ms. McStay has testified that
24 they were hers from April 16th, 2020.

25 So I want to ask you something -- again, just

Pl. Resp. - Statements by Shaffer are not hearsay because they go to notice to District of potential harassment toward Smith. They are relevant to whether the District responded consistent with its obligations to investigate all potential discrimination or ignored information and obligations in retaliation against Smith. See Dkt. 46 at 23:23-24:4. Statements by McStay are not hearsay because she is speaking agent for District and also goes to notice. Witness testified to extent of her knowledge.

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1 recognizing these are Ms. McStay's notes of the
2 conversation. Here in the middle of the page, it
3 says, quote, last year every time you saw Ron and
4 Kristi -- excuse me. I need to say that again.

5 Quote, "Last year, every time you saw Ron you saw
6 Kristi. Then suddenly that was not the case
7 anymore."

8 Do you see where it says that?

9 A Yes.

10 Q Do you recall from this conversation with
11 Ms. Shaffer her saying anything to that effect?

12 A She may have. I don't recall.

13 Q Do you -- based on just your personal observations
14 at the district, do you agree or disagree with
15 Ms. Shaffer's comment there?

16 MR. HARRINGTON: Objection to form.

17 THE WITNESS: They may have been together. I
18 don't -- I don't recall always seeing them together.

19 BY MR. GILMAN:

20 Q At any point or just in the '19-'20 school year?

21 A Well, in -- she is saying every time you saw Ron,
22 you saw Kristi. They may have been down the hall,
23 but I just can't say that every time I saw either one
24 of them they were together.

25 Q Let me ask maybe a different question.

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1 After Ms. Smith had returned from her FMLA leave,
2 did you, from your personal observations, see that
3 she was spending less time than she had previously
4 with Mr. Banner?

5 A That calls for speculation and I'm not comfortable
6 with that, because I wouldn't know if they were
7 together or not. Kristi was in her office a lot
8 because of her accommodation.

9 Q Did you observe any kind of change in Mr. Banner
10 and Ms. Smith's working relationship from before to
11 after her head injury?

12 MR. HARRINGTON: Object to the form.

13 THE WITNESS: No, I did not.

14 BY MR. GILMAN:

15 Q At the bottom of Ms. McStay's notes, there is a
16 sentence, "Sometimes he overestimates his authority,"
17 end quote.

18 Do you recall Ms. Shaffer raising any concerns
19 about Mr. Banner overestimating his authority?

20	A	Not to me.
----	---	------------

21 Q I'm going to show you what was previously marked
22 as Exhibit No. 25. You should see it up on your
23 screen here.

24 Are these the notes that you typed up about your

25 April 16th, 2020, meeting with Ms. Shaffer and

Pl. Resp. - Testimony authenticates Trial Ex. 14 (Dep. Ex. 25). Statements by Shaffer are not hearsay because they go to notice to District of potential harassment toward Smith and whether District's failure to act was retaliatory. See Dkt. 46 at 23:23–24:4. Witness testified to extent of her knowledge.

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1 Ms. McStay?

2 A Yes.

3 Q Did you make these notes contemporaneously, or are
4 these ones that you wrote after the fact?

5 A After the fact.

6 Q And do you know approximately how long after the
7 fact: Like the same day? Same week? Same month?

8 A Same day.

9 Q So the first sentence says, quote, "We have
10 received a concern regarding an allegation of
11 disparaging comments by you against Clover Park
12 leadership." Against whom in Clover Park leadership
13 had Kristi Smith allegedly made -- or excuse me had
14 Holly Shaffer allegedly made disparaging comments?

15 A Sorry. You are asking me to go back in time and
16 try to remember this. I believe it was the
17 superintendent's office that she was referring to.

18 Q And just to be clear, there was an allegation that
19 Holly Shaffer was making disparaging comments about
20 the superintendent's office as far as how it was
21 treating Kristi Smith?

22 A That's what it looks like. Specifically, it was
23 reported to superintendent that you indicated to a
24 coworker that they are making it hard for Kristi
25 Smith to be successful.

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1 Q And, again, that "they" that you put in quotation
2 marks, is that also referring to the superintendent's
3 office?

4 A It must be.

5 Q A little bit further down there, there is a
6 sentence that refers to student services is
7 collateral damage right now.

8 Having read that, does that refresh your memory
9 about what Ms. Shaffer's concerns were during this
10 meeting?

11 A I don't know what her -- her perception of that
12 is. Holly felt like student services never received
13 the budget that they needed to be successful.

14 Q To your knowledge, did Ms. Shaffer ever
15 communicate to human resources that she felt that
16 what she perceived as the superintendent's hostility
17 towards Kristi Smith was, in fact, making it more
18 difficult for student services to complete its job?

19 MR. HARRINGTON: Objection to form.

20 THE WITNESS: I'd say this is the first time
21 we've heard that.

22 BY MR. GILMAN:

23 Q Was that your understanding that that was what
24 Ms. Shaffer was complaining about based on your
25 meeting with her in April of 2020?

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1 A Repeat your --

2 MR. HARRINGTON: Object to form.

3 BY MR. GILMAN:

4 Q Following -- as a result of your April 16th, 2020,

5 meeting with Holly Shaffer, did you personally

6 understand that Holly Shaffer was complaining that

7 her department was suffering because the

8 superintendent was mistreating Kristi Smith who had

9 been put in charge of that department?

10 MR. HARRINGTON: Objection to form.

11 THE WITNESS: I don't think that's exactly what

12 she was trying to say.

13 BY MR. GILMAN:

14 Q What do you think Ms. Shaffer was trying to say in

15 this April 16th, 2020, meeting?

16 A I think she had to defend the fact that she had

17 said some stuff about the superintendent. And

18 Kristi's allowed to be successful. And so I think

19 she turned it around. And that's how we heard what

20 we heard.

21 And I think that she wanted to interview for the

22 student services. Not her personally, but she wanted

23 it to be an interview process versus somebody

24 appointed.

25 Q During this meeting, did Ms. Shaffer inform human

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1 resources that she had witnessed others disparaging
2 Kristi Smith specifically in relation to her medical
3 condition?

4 A I don't recall that.

5 Q A little further down the page, and I will
6 highlight it here too, is a sentence that starts,
7 "Holly indicated she heard." Do you see that?

8 A Yep.

9 Q And it says, quote, "Holly indicated she heard a
10 lot of people commenting about Kristi when she was
11 out. There was a lot of backstabbing comments
12 questioning whether or not she actually had a
13 concussion and how maybe she was faking it," end
14 quote.

15 Why did you write that note?

16 A Well, she must have said that, right? So she --
17 Holly was one of them that had said some disparaging
18 comments about Kristi. And then she apologized once
19 Kristi got back.

20 Q Did you understand from your conversation with
21 Ms. Shaffer that's documented in your notes here in
22 Exhibit 25 that she was alerting human resources to
23 the fact that other Clover Park School District
24 employees were questioning the veracity of
25 Ms. Smith's injury?

double-hearsay, 401-403 speculative,
vague, incomplete, confusing, cumulative,
duplicative, 602 lack of firsthand
knowledge and recollection.

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1 MR. HARRINGTON: Objection to form.

2 THE WITNESS: Ask your question again.

3 BY MR. GILMAN:

4 Q Did you understand from your meeting with Holly
5 Shaffer in April 16th of 2020 that she was saying
6 that there were other Clover Park School District
7 employees, not including herself, who were
8 questioning Kristi Smith's medical condition?

9 A She may have said that. You are asking me if they
10 alerted HR? If she alerted?

11 Q Yes.

12 A I think she was making conversation. I don't know
13 as much as it was an alert.

14 Q Okay. The three people in this meeting on April
15 16th, 2020, included the executive director of human
16 resources, Lori McStay, correct?

17 A Correct.

18 Q And who is Lori McStay's second in command at the
19 time this meeting occurred?

20 A Are you talking about me being the HR director or
21 what?

22 Q Right. I mean the next in the organizational
23 hierarchy for human resources, that was you, correct?

24 A Correct.

25 Q And at the time, you and Ms. McStay were the two

Pl. Resp. - Statements by Shaffer are not hearsay because they go to notice to District of potential harassment toward Smith and District's response. Relevant for the same reason. See Dkt. 46 at 23:23-24:4. Witness testified to extent of her knowledge.

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1 highest ranking HR professionals in Clover Park
2 School District, correct?

3 A Yes.

4 Q And during that meeting in April 16th of 2020, did
5 Ms. Shaffer communicate to you that beyond herself,
6 other Clover Park School District employees were
7 openly questioning Kristi's Smith's medical
8 conditions?

9 MR. HARRINGTON: Objection to form.

10 THE WITNESS: She did.

11 BY MR. GILMAN:

12 Q I'm sorry. Could you say your answer again,
13 please.

14 A She did.

15 Q What steps did the district take upon learning
16 this information to investigate potential comments
17 being made by other administrators about Kristi
18 Smith's medical situation?

19 MR. HARRINGTON: Objection to the form.

20 THE WITNESS: I don't recall.

21 BY MR. GILMAN:

22 Q Was there an investigation conducted based on
23 specifically looking into the issue of whether
24 administrators were openly questioning Kristi's
25 Smith's medical condition?

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1 MR. HARRINGTON: Object to form.

2 THE WITNESS: And this is vague. She says a
3 lot of people. So she didn't define. She didn't
4 specifically identify anybody.

5 BY MR. GILMAN:

6 Q Did you ask her who --

7 A I don't -- I don't recall.

8 Q Did the district conduct any investigation into
9 who the other individuals were that Ms. Shaffer was
10 speaking about who were making comments about Kristi
11 Smith or her injuries?

12 MR. HARRINGTON: Objection. Form.

13 THE WITNESS: I don't -- I don't recall.

14 BY MR. GILMAN:

15 Q If we could go to the second page of Exhibit 25,
16 it's a continuation of your notes here.

17 It says, according to your notes, Ms. Shaffer
18 reported, quote, "There were a lot of people that
19 made a lot of inappropriate comments and especially
20 about Kristi," end quote.

21 What is this note referring to?

22 A I think it's the prior sentence. Holly feels that
23 maybe we aren't all assuming best intention as
24 leaders. And she's saying that there were other
25 people making inappropriate comments and about

double-hearsay, 401-403 speculative, vague, incomplete, confusing, cumulative, duplicative, 602 lack of firsthand knowledge and recollection

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1 Kristi. So I don't think it was just about Kristi.
2 I think she feels that we all had an opportunity to
3 grow.

4 Q Okay. Well, let's jump two paragraphs above that
5 where your notes of your conversation with
6 Ms. Shaffer state, quote, "Holly indicated that she
7 participated in some conversation about Kristi. And
8 after she reflected on it, she went to Kristi and
9 told her and apologized," end quote.

10 Did Ms. Shaffer say during this meeting that she
11 herself participated in conversations with others
12 that were disparaging of Kristi Smith?

13 A Yes.

14 Q Would you agree that it takes more than one person
15 to have a conversation?

16 MR. HARRINGTON: Object to form.

17 THE WITNESS: Yes.

18 BY MR. GILMAN:

19 Q Did you come to learn at any point that
20 Ms. Shaffer was upset by the fact that she got called
21 in by human resources, you and Ms. McStay, to discuss
22 this issue?

23 A Yes.

24 MR. HARRINGTON: Object to the form.

25 BY MR. GILMAN:

Pl. Resp. - Statements by Shaffer are not hearsay because they go to notice to District of potential harassment toward Smith and District's response or lack of response. Relevant for the same reason. See Dkt. 46 at 23:23-24:4. Witness testified to extent of her knowledge.

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1 Q How did you learn that?
2 MR. HARRINGTON: Object to the form.
3 THE WITNESS: She indicated as such.
4 BY MR. GILMAN:
5 Q I'll show you what was previously marked as
6 Exhibit No. 38.
7 MR. HARRINGTON: Eric, I need five minutes.
8 MR. GILMAN: For?
9 MR. HARRINGTON: Do I have to tell you? I need
10 a bathroom break.
11 MR. GILMAN: I'm sorry. I thought I -- could I
12 ask one quick question?
13 MR. HARRINGTON: Yeah. One question is fine.
14 BY MR. GILMAN:
15 Q Ms. Krininger, are you represented by counsel here
16 today?
17 A Yes.
18 Q By whom?
19 A Mark O'Donnell. Preg O'Donnell, so Jason.
20 Q He's acting as your attorney today?
21 A Yes.
22 MR. GILMAN: All right. We can go off the
23 record.
24 MR. HARRINGTON: Thanks.
25 (A break was taken.)

Pl. Resp. - Goes to credibility and bias on the basis that District and witness have same lawyer. Also District gave the witness a thing of value (free legal representation) days before she was to give sworn testimony for this case.

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1 BY MR. GILMAN:

2 Q Ms. Krininger, when you were at Clover Park School
3 District, and specifically as the director of human
4 resources, was your job to set policy for the
5 district's administration or implement policy
6 decisions that had been made by others?

7 A Implement, made by others.

8 Q Before we took a break, you mentioned that
9 Mr. O'Donnell's office was representing you today.

10 Did you sign a new representation agreement with
11 Mr. O'Donnell's firm?

12 A A new representation agreement? What do you mean?

13 Q Have you signed a contract with the Preg O'Donnell
14 law firm?

15 A I have not.

16 Q How do you know that you are being represented by
17 the district's attorneys here today?

18 A Because they called me last week and they asked me
19 if I wanted representation.

20 Q Jumping back to the exhibit we were looking at
21 before the break, No. 38, you are familiar with this
22 letter?

23 A Vaguely.

24 Q And I'm showing you the second page as well. It's
25 a 2-page exhibit. The correspondence is from Holly

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1 Shaffer.

2 My question is did you have any personal
3 involvement in the district's process for addressing
4 the formal complaint that Ms. Shaffer made in
5 Exhibit 38?

6 A No.

7 Q Did you have -- other than the April 16th, 2020,
8 meeting with Ms. Shaffer, did you have any other
9 interactions with Holly Shaffer about her commentary
10 about her observations about how Kristi Smith was
11 being treated or her subsequent complaint to the
12 district?

13 A I don't recall.

14 Q Show you what was Exhibit 40 in a prior
15 deposition. These are, again, some of Ms. McStay's
16 notes from May 20th of 2020. I didn't see any
17 indication in these notes that you were present for
18 the meeting, but I wanted to ask. Do you have any
19 independent recollection of being involved in any
20 subsequent meetings with Holly Shaffer or Ms. McStay?

21 A I don't believe I did.

22 Q I'm going to show you a couple of exhibits that,
23 to my understanding, may be related. But I want to
24 show them to you one at a time here. The first was
25 previously marked as Exhibit 83.

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1 And this is a multipage email thread. And so what
2 I want to do is scroll down to the bottom of it
3 again. And we're at the last page of this particular
4 exhibit.

5 I'm going to scroll up one page to an April 19th,
6 2020, email from Kristi Smith to Lori McStay. And if
7 you look right above that, Ms. McStay subsequently
8 forwarded that email to Mr. Banner and yourself and
9 the subject line here is "concern."

10 First off, do you recall being involved in the
11 response to Ms. Smith's concern email?

12 A I was not.

13 Q Okay. Down here towards the bottom of the page
14 where Ms. Smith's complaint or concern email begins,
15 could you just go ahead and just read that to the
16 bottom. And then let me know when you are ready to
17 switch pages.

18 A Okay.

19 Q And I will scroll pages.

20 A Is there any way you can make this a little bit
21 bigger? I'm really struggling.

22 Q Of course. I will see what I can do.

23 A That's good. Thank you.

24 Q Of course.

25 A Okay.

ER 401-409, vague, relevance, speculative, confusing, cumulative, duplicative, 602 lack of firsthand knowledge and recollection

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1 Q Did you have a chance to read that?

2 A Yep.

3 Q Okay. And then I said I would show you two
4 exhibits. And the second one is No. 84. And this
5 was previously used in a deposition.

6 The header shows that -- I believe this was
7 printed from your email. And I will represent to you
8 that it was received in response to a public records
9 act request.

10 Below here, there is some handwritten commentary
11 in these notes. And I will also show you the -- I'm
12 sorry. This is a single page. It looks like we did
13 not get the second page of this exhibit scanned in.

14 But anyway, while we've got it here, is this your
15 handwriting in the margins --

16 A It is.

17 Q Sorry, Ms. Krininger.

18 So having seen this note page, does that change
19 your response at all about whether you were involved
20 in the district formulating a response to Kristi
21 Smith's concern email?

22 A No, it doesn't change my response. I wasn't
23 involved. Those are my own notes.

24 Q These were your own notes?

25 A Mm-hmm.

Pl. Resp. - Authenticates Trial Ex. 15. Testimony is relevant because the exhibit shows District HR Director's contemporaneous understanding that reason for demotion was because "Brian took over in her absence so made sense to keep it [Teaching and Learning] there."

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1 Q Yes?

2 A Yes. Sorry.

3 Q And why did you create these notes?

4 A I was just reading through what was sent to me,
5 and I just wrote some notes on it.

6 Q Okay. Did you ever discuss your notes with anyone
7 else?

8 A I probably would have shared them with Lori
9 McStay.

10 Q Okay. I mean, did you have a meeting or a
11 discussion to go over how to respond to Ms. Smith's
12 concern email?

13 A No. Lori probably worked with the superintendent
14 to determine what -- the reason why they include me
15 on this is mostly because I keep records. So I just
16 would keep it for records.

17 Q Okay. Along the right gutter here, it says,
18 "Heard mean girl term. Didn't know what that means."
19 Do you recall what that is in reference to?

20 A Yeah. I've heard that. I've heard that term that
21 they were using, but I don't recall what it is. I
22 remember that Kristi used that term, the mean girls.

23 Q And then the information that you are including in
24 these notes -- and I will note for the court
25 reporter, also looks like the second page of this

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1 exhibit may not have gotten scanned in, but it's a
2 continuation of these notes.

3 One of the statements in Ms. Smith's concern email
4 was, quote, "Over the past weeks, the situation has
5 escalated. And I understand that others who have
6 recognized the unfair way in which I have been
7 treated have been called in and questioned about it,"
8 end quote.

9 And I recognize you can't see it where you are
10 right now, but in pen, you had written "Holly" over
11 that. Where did you have the information that that
12 was Holly who had made that --

13 A Well, Holly was --

14 Q Why did you write "Holly"?

15 A Holly was the only one that we were aware of,
16 right?

17 Q I'm going to hop back to Exhibit No. 83. And I'll
18 scroll back up, because there is some text that's
19 been added to the same email. And it's kind of in
20 all caps text here. Do you see where I'm looking?

21 A Yeah.

22 Q All right. And then above that, there is also
23 several bullet points that are all caps. And I'm
24 going to go all the way to the top. I just want you
25 to see where I'm referring to the all caps text in

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1 response to some of the things written by Ms. Smith.

2 Do you know who wrote these all caps messages into
3 this document?

4 A No, I am not -- I don't know.

5 Q Other than Lori McStay, you, and Superintendent
6 Banner, was anybody else involved in the district
7 formulating a response to Kristi Smith's email with
8 the subject line "concern"?

9 A And I don't think I was involved, but I am not
10 aware that it was anyone other than Lori and Ron.

11 Q This highlight -- I'm sorry. I jumped back to
12 Exhibit 84 on the first page. There is highlights
13 around, "If my change in employment status was
14 actually a reorganization, did anyone other than me
15 have their pay or responsibility diminished?"

16 First off, are you the one who highlighted that?

17 A I don't recall.

18 Q Okay. It also says, "reviewed this." What did
19 you do to review this particular point?

20 A I don't know.

21 Q Did you speak with anyone?

22 A I couldn't tell.

23 Q Okay. And then below that there is sort of an
24 asterisk. And it says, "Brian took over in her
25 absence, so it made sense to keep it there."

Pl. Resp. - Authenticates Trial Ex. 15. Testimony is relevant because the exhibit shows District HR Director's contemporaneous understanding that reason for demotion was because "Brian took over in her absence so made sense to keep it [Teaching and Learning] there." Witness testified to extent of her knowledge. No hearsay because statements are by District's managers and also go to notice.

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1 What does that note mean?

2 A That's got to be teaching and learning.

3 Q Okay. So Brian took over teaching and learning in
4 Kristi Smith's absence, so it meant to keep teaching
5 and learning with him; is that what you are
6 communicating there?

7 A I believe that -- on my own notes, that's what I'm
8 writing, yes.

9 Q Okay. Where did you get that information from?

10 A That Brian took over?

11 Q Yes.

12 A While she was out? Well, I'm sure somebody spoke
13 to me. Probably Lori spoke to me and shared that
14 with me.

15 Q Okay. And the notion that it made sense to keep
16 it there, is that --

17 A For continuity.

18 Q Okay. Was there any discussion that you recall
19 about kind of a need for continuity with respect to
20 teaching and learning?

21 A I think I've seen it, but I don't -- I think it
22 was in the board brief that you showed me earlier.

23 Q And maybe more conceptually, can you speak to
24 the -- sort of the issue or importance of continuity
25 with respect to teaching and learning?

ER401-403 misleading, confusing, cumulative,
duplicative, vague, irrelevant)

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1 MR. HARRINGTON: Objection to form.

2 THE WITNESS: I don't believe I can. But I
3 would -- I mean, it makes sense if somebody is there
4 and her time was limited as when she was coming back.
5 I think they were just working on some big projects,
6 if I had to speculate, which I don't want to do.

7 BY MR. GILMAN:

8 Q Who is Terry Herbert?

9 A Terry Hebert is a secretary. She -- I want to say
10 it might be the deputy superintendent's secretary.

11 Q Did you ever speak with Ron Banner about any of
12 the changes to Kristi Smith's duties during the
13 2019-2020 school year?

14 A I don't recall that I did.

15 Q And did you ever speak to Mr. Banner about the
16 dissolving of Kristi Smith's position in 2020?

17 A I did not.

18 Q During the reasonable accommodations process for
19 Ms. Smith, did Ms. Smith ever request that teaching
20 and learning be removed from her oversight?

21 A Not during the meetings we held.

22 Q Did Ms. Smith at any time communicate to you that
23 she had any desire for teaching and learning to be
24 removed from her oversight?

25 A She never communicated that to me.

Pl. Resp. - There is no legal conclusion, just facts. District's noncompliance with its own reasonable accommodations process (to which Witness testified earlier) is relevant to issue of discrimination or retaliation.

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1 Q All right. To your knowledge, did Kristi Smith
2 ever communicate to anybody that she wanted teaching
3 and learning removed from her responsibilities?

4 A I can't answer that.

5 Q As part of the reasonable accommodations process,
6 did you ever inform Kristi Smith that the district
7 was contemplating removing teaching and learning from
8 her responsibilities?

9 A I don't believe that we did that, but if we did
10 it, it would be under the direction of the
11 superintendent. It wouldn't be something that would
12 be part of the accommodation process.

13 Q Why not?

14 A Because we dealt with things that had to do with
15 her auditory and her restrictions regarding light and
16 overstimulation, that type of thing.

17 Q Are you saying that changing job duties can never
18 be part of a reasonable accommodation process?

19 A I'm not saying that at all. I'm just saying it
20 wasn't discussed.

21 Q Okay. And that's what I want to make sure we're
22 clear on, is changing job duties was not part of the
23 reasonable accommodations process that you assisted
24 with relating to Kristi Smith?

25 A Right. We didn't do a transitional assignment.

53:6-14 Def. Obj. - legal conclusion,
ER401-403 misleading, confusing, cumulative,
duplicative, vague, irrelevant)

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1 Q Did Kristi Smith ever make any request that you're
2 aware of to be given oversight of student services?

3 A Are you asking if she requested that?

4 Q Well, it's actually broader than that, but let's
5 be more specific first.

6 As part of the reasonable accommodations process,
7 did Kristi Smith ever ask to have her duties shifted
8 to student services?

9 A No.

10 Q As part of the reasonable accommodations process,
11 did anyone ever communicate to Ms. Smith that she
12 would be given responsibility over student services?

13 A Not as part of the reasonable accommodation
14 process.

15 Q How about in any -- well, okay.

16 All right. Ms. Krininger, that's all the
17 questions I have.

18 Actually, one just logistical. I'm not sure
19 what -- whether the representation relationship
20 between you and the district will be ongoing.
21 Inasmuch as there is a trial in this matter that
22 might require the service of papers on you, trial
23 attendance subpoena to testify, is that something
24 that we can serve through the district's counsel, or
25 should we go directly to you if that becomes

Pl. Resp. - There is no legal conclusion, just facts. District's noncompliance with
its own reasonable accommodations process (to which Witness testified earlier)
is relevant to issue of discrimination or retaliation.

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1 necessary?

2 A You can serve it through the district's counsel.

3 MR. GILMAN: Okay. Thank you. I have no
4 further questions.

5 MR. HARRINGTON: No questions.

6 THE COURT REPORTER: Okay. Would you like to
7 have an opportunity to read through the transcript
8 and sign that it is all correct, or would you like to
9 waive that?

10 THE WITNESS: I'd like to do that.

11 MR. GILMAN: I will order, please.

12 MR. HARRINGTON: We will take a copy.

13 (Deposition concluded at 1:00 p.m.)

14 (Signature reserved.)

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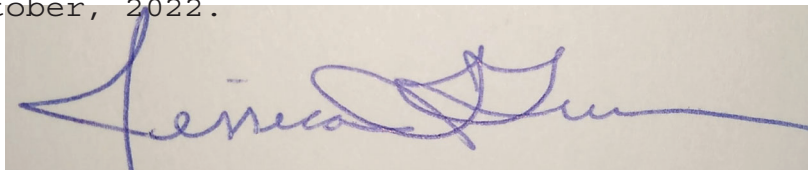
Linda Krininger

10/3/2022

REPORTER'S CERTIFICATE

I, JESSICA L. TURNER, the undersigned Certified Court Reporter, pursuant to RCW 5.28.010 authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify that the sworn testimony and/or proceedings, a transcript of which is attached, was given before me at the time and place stated therein; that any and/or all witness(es) were duly sworn to testify to the truth; that the sworn testimony and/or proceedings were by me stenographically recorded and transcribed under my supervision to the best of my ability; that the foregoing transcript contains a full, true, and accurate record of all the sworn testimony and/or proceedings given and occurring at the time and place stated in the transcript; that a review of which was requested; that I am in no way related to any party to the matter, nor to any counsel, nor do I have any financial interest in the event of the cause.

WITNESS MY HAND and SIGNATURE this 10th day of October, 2022.



JESSICA L. TURNER, CCR
Washington Certified Court Reporter, CCR 3187